**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR**

**MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928**

**WP(C).No. 7553 of 2006(Y)**
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**PETITIONER:**
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**M/S. G.P.N. CASHEW EXPORTING COMPANY,**
**P.B.NO.276, KOLLAM-691 001, REPRESENTED BY**
**MANAGING PARTNER, N. JAYAPRAKASH.**

**BY ADV. SRI.T.M.SREEDHARAN**
**SRI.V.P.NARAYANAN**

**RESPONDENTS:**
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1. **THE ASSISTANT COMMISSIONER (ASSESSMENT)V,**
   **COMMERCIAL TAXES, KOLLAM.**

2. **THE TAHSILDAR (R.R), KOLLAM.**

**BY GOVERNMENT PLEADER SRI. MOHAMMED RAFIQ for R2**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**APPENDIX**

**PETITIONER'S EXHIBITS:**

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|---|---|
| **EXT.P1:** | **COPY OF COMMON JUDGMENT DTD. 5/12/2005 IN WP(C) NOS. 29471/2005 AND 29607/2005 PASSED BY THIS HON'BLE COURT.** |
| **EXT.P2:** | **COPY OF ORDER DTD. 31/01/2006 IN I.A.NO.660/2006 IN WP(C) NO.29471/2005 PASSED BY THIS HON'BLE COURT.** |
| **EXT.P3:** | **COPY OF RECEIPT NO.34 IN BOOK NO.19/05-06 DTD. 31/01/2006 PASSED BY THE 2ND RESPONDENT.** |
| **EXT.P4:** | **COPY OF REVENUE RECOVERY NOTICE NO.D3-1212/94 DTD. 18/02/2006 PASSED BY THE 2ND RESPONDENT.** |

**/TRUE COPY/**

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K.BALAKRISHNAN NAIR, J.

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W.P.(C) NO. 7553 OF 2006-Y

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JUDGMENT

The petitioner was in default to the State in relation to sales tax arrears. When revenue recovery steps were taken, the petitioner and its proprietor filed W.P.(C) Nos.29471 & 29607/2005 respectively. Those writ petitions were disposed of by Ext.P1 common judgment. As directed in Ext.P1 judgment, the petitioner submits, it paid the entire amount due to the Government, to the 2nd respondent. Thereafter, the 2nd respondent has served Ext.P4 notice on the petitioner to pay collection charges. This Writ Petition is filed, challenging Ext.P4. The petitioner submits, sales tax is a due payable to the Government. When the Government collect sales tax, it cannot collect any collection charges, unlike the case of collection made on behalf of institutions covered by Rule 5 of the Revenue Recovery Rules, 1968.

2. The 2nd respondent has filed a counter affidavit, supporting the impugned demand contained in Ext.P4.

3. Heard the learned counsel on both sides. Rule 5 of the Revenue Recovery Rules reads as follows:

> "5.(1) Collection charges at the rate of 5 percent of the arrears to be collected under the provisions of the Act on behalf of any institution notified under Section 71 or collected on behalf of any institution under Section 68 when the arrears does not exceed Rupees Five Lakhs and at the rate of 7.5% when the arrears exceed Rupees Five Lakhs shall be realised from the defaulters and accounted as arrears to such institutions.
>
> (2) The collection charges shall be deducted from the amount recovered and the balance alone shall be payable to the institution." (Emphasis supplied)

A close reading of the above Rule would show that institutions notified under Section 71 and institutions covered by Section 68 alone are liable to pay collection charges. Sub-rule (2) further clarifies the position that the amount due to the institution shall be paid after deducting the collection charges as prescribed under sub-rule (1) of Rule 5. In this case, the collection is not for any institution. Therefore, Rule 5 has no application. Here the Government collect money for itself. Therefore, the demand for collection charges is without jurisdiction. Accordingly, Ext.P4 is quashed. The 2nd respondent shall lift the attachment of the properties of the petitioner, if there is no other due payable by it to the State. In other words, attachment shall not be continued for the reason of non-payment of

collection charges.

The Writ Petition is disposed of as above.

19th February, 2007. K.BALAKRISHNAN NAIR, JUDGE.

Nm/